

JK
4174
E43
1993

**EMERGING ISSUES, HOT TOPICS AND
TRENDS IN LEGISLATIVE ISSUES**

JANUARY 4, 1993

LEGISLATIVE LIBRARY

LEGISLATIVE LIBRARY



**EMERGING ISSUES, HOT TOPICS, AND TRENDS IN
LEGISLATIVE ISSUES**

Terrence D. Sullivan, Director of Research
January 4, 1993

We have in recent years briefed incoming legislators on emerging issues, hot topics, and trends in legislative issues which might be presented during the upcoming biennium. I compiled this list by requesting the legislative staff to provide their ideas as to which, in their opinion, are likely to arise. My ideas were then added to the mix, and the whole was edited. What follows is the product of this process.

I WOULD EMPHASIZE THAT THIS IS NOT MY PUBLIC POLICY WISH LIST NOR THAT OF ANY STAFF MEMBER. OUR MENTIONING OR FAILING TO MENTION AN ISSUE SHOULD NOT BE VIEWED AS AN ENDORSEMENT OF OR OPPOSITION TO ANY PROPOSAL.

This document is divided into the following sections:

- I. BUDGET
- II. CIVIL LAW AND PROCEDURE
- III. CONSTITUTION
- IV. CORRECTIONS
- V. COURTS
- VI. CRIMINAL LAW AND PROCEDURE
- VII. ECONOMIC DEVELOPMENT
- VIII. EDUCATION
- IX. ELECTION LAW
- X. EMPLOYMENT
- XI. ENVIRONMENT
- XII. FAMILY LAW
- XIII. FINANCIAL ISSUES
- XIV. GENERAL ASSEMBLY
- XV. GOVERNOR AND COUNCIL OF STATE
- XVI. HUMAN RESOURCES
- XVII. INSURANCE
- XVIII. LOCAL GOVERNMENT
- XIX. PERFORMANCE AUDIT
- XX. PERSONNEL
- XXI. STATE GOVERNMENT, GENERALLY
- XXII. TAXATION
- XXIII. TRANSPORTATION
- XXIV. UTILITIES

JK 4174 .E43 1993



After each main topic, there follows the names and telephone number of the staff people most familiar with the area discussed. If you wish to investigate any of these matters in greater detail, please contact the indicated individuals.

The following acronyms are used throughout this paper and their meanings are as follows:

LRC (Legislative Research Commission) -- the umbrella organization charged with conducting most of the interim legislative studies. These studies are conducted by individual committees. There are usually some 40-60 of these committees.

GPAC (Government Performance Audit Committee) -- a LRC Committee, which was authorized by the 1991 General Assembly to review the performance of State agencies in all three branches of State government and to recommend changes to promote efficiency. GPAC recommendations are contained in the substantive sections of this paper as well as at its own heading. GPAC work is now scheduled for completion at the end of January 1993.

I. BUDGET (Linda Powell and David Crotts -- 733-4910)

A. FISCAL OUTLOOK FOR 1993 SESSION

The budget outlook facing the 1993 General Assembly is a mixed bag. The good news is that the \$1.2 billion budget shortfall facing the 1991 General Assembly has been replaced by a modest surplus as a result of the 1991 Session budget fix. The bad news is this surplus is far short of meeting current and backlog expansion budget needs for salaries and other items. In addition, the surplus is far less than the amount for a typical year during the 1980's.

The reasons can be illustrated by focusing on the budget picture for 1993-94:

1. Revenue Growth

During a normal economic recovery, General Fund revenues would grow by 10-12% for a year or more. In today's dollars, this would provide \$800-960 million in initial spending availability, prior to subtracting continuation budget increases. In the years after the recovery, growth would settle back to the 8-9% area, providing \$640-720 million of beginning availability in today's dollars.

During this cycle, the economy seems to have skipped both the strong recovery phase and the stable growth trend that normally follows. For example, 1991-92 revenue growth (adjusted for tax law and other changes) was 4.5%. The budgeted rate for 1992-93 is 6.1%. The tentative consensus revenue estimate for 1993-94 assumes 6.2% growth.

This estimate provides \$512 million in beginning revenue availability for 1993-94. From this amount, the continuation budget increases outlined below must be subtracted.

2. **Continuation Budget Increases**

The State's General Fund operating budget for 1992-93 is \$7.87 billion. The 1993-94 budget recommended by Governor Martin shows the following adjustments to this number:

(\$ Mill.)	
<u>Item</u>	<u>Amount</u>
Medicaid: Utilization and Cost Increases	\$125
Medicaid: 1992 Budget Decision*	65
AFDC/Other Social Services	28
Corrections	45
K-12 Enrollment	31
Other (Net)	<u>40</u>
Total	\$334

* The Governor and 1992 General Assembly agreed to use a one-time financing mechanism to cover the 1992-93 Medicaid increase. The proposed budget would close this gap by adding back the dollars to budget requirements.

Not included in the Governor's recommendation are the additional requirements for employee health insurance. Using the 1991-93 biennium requirements as a proxy, the additional General Fund cost would be \$75 million.

In conclusion, additional continuation budget and health insurance increases would use up \$409 million of the \$512 million beginning revenue availability, or 80%. This leaves only \$103 million in discretionary funding availability for salaries and other items, compared to \$600-700 million in the mid-1980's (stated in current dollars).

Each 1% pay raise for teachers and State employees costs \$55 million.

3. **Capital Spending Availability**

Funding for capital projects comes from the State's year-end credit balance for the prior year. During a normal economic recovery these funds mushroom. The reasons include a recovery that far exceeds the

conservative budget estimates made during the recession and unspent appropriations (reversions) amounting to about 3% of authorized spending. For example, in the mid-1980's capital budgets amounted to around \$250 million. This is equal to \$400 million in today's dollars.

The sluggish economic recovery, combined with below-average reversions due to recent budget cuts, leads to an expected year-end General Fund credit balance of \$178 million for 1992-93. By law, 25% of this money must go to the rainy-day fund. This leaves \$133 million for capital, or 1/3 of the mid-1980's amount.

B. BUDGET ISSUES

In light of the tight operating and capital budget availability, the following issues may arise during the 1993 Session:

1. **Budget Priorities**
Limited spending availability will place much emphasis on selecting priorities from among spending pressures: cost-of-living salary increases, merit raises, catch-up spending to offset past budget cuts and minimal salary increases, new programs, and expansion of existing programs.
2. **Budget Cuts**
The 1991 General Assembly came up with about \$600 million of permanent budget cuts in 1991 to resolve the \$1.2 billion budget crisis. Will there be interest in looking again at the continuation or base budget to free-up resources for salaries and expansion? How will the Government Performance Audit Commission recommendations be worked into the budget process?
3. **Capital Improvements**
During the last decade the State has used pay-as-you-go financing to fund capital projects. With a declining debt burden, low interest rates, and limited pay-as-you-go resources, will there be interest in a major State bond issue? If so, will the bond issue be paired with a source for funding the debt service cost of the bonds? What types of items will go into any bond package? Will funds be authorized in the appropriations process to catch-up on the backlog of repair and maintenance needs of the State? With regard to bonds for community college and university facilities, please see the discussion of Education Capital Outlay Bonds under EDUCATION below.
4. **Lottery and Horse Racing**
Will either or both a State lottery or horse racing be authorized? If so, will their proceeds be used for one-time items or State programs? Bills proposing the establishment of a State lottery have been introduced in

recent sessions, and it seems likely that this issue will arise again. A LRC Committee will recommend establishing pari-mutuel betting in connection with horse racing. Please see the fuller discussion of Horse Racing under **CRIMINAL LAW -- GAMBLING**.

5. **Highway Funding**

What is the proper mix of appropriations for new construction versus maintenance?

6. **Departmental Receipts**

Do university and community college tuition receipts contribute an appropriate share of spending requirements, relative to General Fund appropriations? Do agency user fees cover the cost of providing services benefiting specific individuals or groups?

7. **Budget Reform**

Will there be revisions to the 1991 budget reform legislation?

That legislation provided for the following:

- a. Requires any fiscal analysis of the overall budget outlook and proposed legislation affecting State revenues or State expenditures to encompass a five-year period. Legislation proposing to appropriate funds from the General Fund for State facilities must contain an estimate of the annual operating and maintenance costs of the facility for the first 20 years. Legislation that could lead to increases in incarceration requires a five-year fiscal analysis.
- b. Clarifies law limiting growth of State employees to population growth.
- c. Requires Office of State Budget and Management to recommend to the 1993 General Assembly a method to establish a permanent reserve for repair, renovation, and maintenance of State buildings.
- d. Requires enactment of Current Operations Appropriation Act by June 15th of odd-numbered years ("long session") and by June 30th of even-numbered years ("short session"). Requires General Fund spending availability estimates to be included in the main budget bill. Limits growth in second year appropriations enacted during long session to 2% of appropriations for first year of the biennial budget (limits second-year expansion, but still allow for Medicaid and other unavoidable second-year cost increases).

- e. Allows the State Controller to earmark one-fourth of the General Fund credit balance to the Savings Reserve Account beginning with the estimated balance of June 30, 1992. The remaining amount may be expended only for capital improvements and other one-time items. Requires Governor to obtain legislative approval to use Savings Reserve Account proceeds.
- f. Limits General Fund Operating Budget to 7% of State personal income (1991-92 level). The limit may be increased to the extent that Medicaid costs, employee health cost increases, or corrections system requirements increase at a faster rate than personal income.
- g. Appropriates \$3 million to the Legislative Services Commission to contract for an outside performance audit of the Executive Branch and Legislative Branch of State Government.
- h. Establishes a Joint Select Fiscal Trends and Reform Commission to study budget reform, state and local fiscal relations, impact of fiscal trends on State Budget, and options for dealing with federal mandates.

C. EXECUTIVE BUDGET ACT REWRITE (Emily Johnson - 733-6660 and Cindy Avrette 733-2578)

The Joint Select Commission on Fiscal Trends and Reform is contemplating submitting a rewrite of the Executive Budget Act to clarify present provisions, conform law to actual practice and make other changes.

II. CIVIL LAW AND PROCEDURE

A. TORTS (William R. Gilkeson 733-2578)

1. Medical Malpractice

In recent years there have been unsuccessful attempts to curb medical malpractice suits by, among other means, capping malpractice awards and shortening statutes of limitation.

2. Anti-SLAPP Legislation

Strategic Lawsuits Against Public Participation (SLAPPs) occur when a wealthy entity, such as a developer, attempts to intimidate a "public interest" opponent by using a public forum to object to the developer's plans by slapping the opponent with a million-dollar lawsuit alleging defamation, abuse of process, or a similar offense. New York enacted anti-SLAPP legislation this year, making it easier for the opponent to get the SLAPP thrown out of court. This type of legislation is getting a good deal of press throughout the country.

3. **Comparative Fault**

The Academy of Trial Lawyers and others have supported the repeal of the contributory negligence doctrine that prevents a plaintiff in an action for negligence from collecting if the plaintiff contributed at all to the injury with his own negligence. Bills have been introduced in prior sessions to establish comparative fault, the system by which damages in negligence are apportioned according to the proportional degree of fault of each party.

B. **GENERAL STATUTES COMMISSION INITIATIVES (Walker Reagan - 733-2578)**

The General Statutes Commission is currently studying several issues, some at the direction of the General Assembly and others on its own initiative. Many of these matters are expected to be reported to the 1993 Session, although the final versions of these proposals have not yet been approved. The following is a summary of those matters most likely to be recommended by the General Statutes Commission in 1993:

1. **Non-Profit Corporation Act Rewrite**

The proposed rewrite of the Non-Profit Corporation Act is an attempt to bring the current Act in line with the previous rewrite of the Business Corporation Act (Chapter 55) and is being modeled after the Uniform Non-Profit Corporation Act.

2. **Adoption of Chapter 4A of the Uniform Commercial Code (Chapter 25) - Uniform Funds Transfers**

It is being proposed that North Carolina adopt, as part of the Uniform Commercial Code (UCC), the uniform Chapter 4A, which in part codifies the common law of contracts as it affects electronic wire transfers of funds, not otherwise covered by Federal law, to spell out the chain of responsibility when funds are being transferred by wire or electronically. This proposed Act will fill the gap left by Federal law, will primarily affect large transfers (normally in excess of \$5 million), and will be part of an effort to adopt uniform rules internationally. Most typical "consumer" electronic transfers, like teller machine transfers, automatic bank drafts and direct deposits, are presently covered by Federal law.

This Act is very technical, but apparently not controversial, being supported primarily by the banking community and promoted by the Federal banking regulatory agencies. The draft appears to provide protection for the "consumer" and deals more with defining the responsibility of the transmitting, intermediary and receiving institutions.

3. **Uniform statutory rule against perpetuities**
A proposal of three bills will be recommended to codify the current common law rule against perpetuities, with a 90-year "wait and see" period, which will help clarify legal situations affected by the Rule, and add clearer tests for when the Rule has been met, in an attempt to reduce legal uncertainty in this area.
4. **Statutory lien law**
The 1992 Session of the General Assembly directed the General Statutes Commission to study the current lien law and recommend any necessary changes or rewrites. Concerns have been expressed by many different sectors about problems and perceived inequities in the current system. It is currently not clear what the Commission might recommend or when it will be able to act, but the matter is being watched closely by all factions of the construction industry, including contractors, suppliers, consumers and title insurance companies.
5. **Uniform Custodial Trust Act**
Recommended by the General Statutes Commission in 1991, this Act passed the Senate in 1991 but remained in the House Judiciary I Committee at the end of the 1992 Session. This Uniform Act, modeled after the Uniform Transfers to Minors Act, may be recommended again by the General Statutes Commission with some minor changes to address concerns raised in the House at the end of the short session.
6. **Adoption Laws Rewrite -- See FAMILY LAW, that heading**

III. CONSTITUTION (William R. Gilkeson - 733-2578)

A. VETO

This is a continuing issue in the General Assembly. Governor-elect Hunt has listed as one of his top priorities the removal of North Carolina's distinction as the only State in which the Governor has no veto. Many legislators have traditionally demonstrated a fondness for the distinction. In 1989, when Governor Martin pushed hardest for a constitutional amendment granting him a veto, he found that legislators insisted on some kind of "balance of power" equation, whereby if the General Assembly allowed an increase in gubernatorial power through the veto, there would be a compensating increase in legislative power. Among the issues which may be considered in any discussion of a veto are:

1. **Override**
What fraction of the vote of each house would it take to override a veto? A strong veto could be overridden by 2/3; a weak veto by a simple majority.

2. **Line-item**

Should the Governor be allowed to veto each appropriation one at a time, rather than having to say yes or no to an entire bill?

3. **Exceptions**

What kinds of legislation should be beyond the reach of the veto? Redistricting is a common exception. A common exception in the 1989 and 1991 veto proposals was local bills. Apparently no other state has an exception for local bills.

4. **Tie-in With Other "Balance of Power" Issues**

If the veto is linked to other constitutional changes, should voters be presented with one package to vote up or down in the referendum or should they be able to vote on veto separately from the other issues.

B. TERM LIMITS

Limitation on the number of terms that can be served has proven to be very popular recently across the country. Officials affected would be members of Congress (although it is questionable whether States may regulate them without a Federal Constitutional Amendment), State legislators, members of the Executive Branch, judges, and others. There have been frequent proposals to repeal the 1977 State Constitutional Amendment allowing the Governor and Lieutenant Governor to serve two consecutive terms.

C. TERM LENGTH

Should legislators' terms be lengthened to four years? Should the Governor be given a single six-year term? In 1989, both those proposals were entered into the balance-of-power equation with the veto proposal.

D. COUNCIL OF STATE

1. **Role of Lieutenant Governor**

Should the office be abolished or made part-time again? One such proposal has surfaced. If not, should the Lieutenant Governor's role be otherwise modified?

2. **Executive Branch Streamlining**

Some have proposed reducing the number of Council of State positions that are elected. One idea would move the Departments of Insurance, Public Instruction, Labor, and Agriculture to the Governor's Cabinet.

E. EDUCATION

GPAC is recommending the appointment of the Superintendent of Public Instruction by the State Board of Education and changing the appointing authority to the State Board of Education -- See **EDUCATION: PUBLIC SCHOOLS: Governance**

F. CONFIRMATION OF GOVERNOR'S APPOINTMENTS

Some states require all Governor's appointees to be confirmed by the Legislature or one house thereof. In North Carolina, few Governor's appointees are required to be confirmed. This is a balance of power issue which in the past has been linked to that of the veto.

G. APPOINTMENT OF JUDGES

Should judges be appointed rather than elected? If so, who should appoint them -- the Governor, a bipartisan commission, or another authority? At which levels -- appellate or trial court? Should there be restrictions on whom may be nominated? How should nominees be confirmed in the first instance? Should there be a re-confirmation process after a few years? These ideas were debated in 1991 and in earlier sessions.

H. SESSION LENGTH

Should a strict limit be placed on the number of days the General Assembly may stay in session?

I. ELECTION CYCLE CHANGE

North Carolina is one of a minority of states that elects most State Executive branch officers during the presidential election year. Recent proposals have been made to move the Council of State elections to nonpresidential even years, or to odd years (as in Kentucky, Mississippi, and New Jersey).

J. INITIATIVE

There have been periodic attempts to allow citizens to get constitutional amendment propositions on the ballot by collecting enough names on a petition, bypassing the General Assembly.

K. VICTIMS' RIGHTS

A LRC Committee has recommended an amendment to the State Constitution that would establish specific rights for crime victims. While the current Fair Treatment for Victims and Witnesses Act provides guidelines to ensure that victims are given consideration in the judicial process, many victim advocates

feel a constitutional amendment is necessary to put victims on equal standing with defendants. On the other hand, opponents of the proposed constitutional amendment feel the same result may be achieved by strengthening the existing statute. The proposed amendment would include the right to be reasonably protected from the accused during the criminal justice process, the right to be notified and to attend court proceedings, the right to make a sworn statement to the court at the time of sentencing, and the right to notification of escape or release of the accused.

L. STATE CONSTITUTIONAL CONVENTION

One idea which surfaced in 1989 was that of having a Convention, the State's first since 1875, with the limited objective of considering the Executive-Legislative power balance.

IV. CORRECTIONS (Brenda Carter - 733-2578)

Prison Bonds

Since 1985, the General Assembly has appropriated funds and authorized the issuance of bonds totaling more than \$300 million for construction of over 11,000 prison beds and ancillary facilities and for renovation and repair of existing facilities. Of the \$200 million Prison and Youth Services Facilities Bonds approved by the voters in 1990, \$87,500,000 remains to be allocated by the 1993 General Assembly. The Department of Correction has developed a master plan for the allocation of the remaining bond funds, which the Governor will review and consider before proposing a schedule for allocation of the funds when he submits his proposed budget to the 1993 General Assembly. In enacting the schedule for allocation of funds, the General Assembly is to consider the master plan, the Governor's proposed schedule, and the recommendations of the Sentencing and Policy Advisory Commission. The General Assembly is to enact a schedule for the disbursement of the remaining bond funds within 30 days of the convening of the 1993 Session.

V. COURTS

See CONSTITUTION -- Appointment of Judges

VI. CRIMINAL LAW AND PROCEDURE (Jennie Dorsett - 733-2578)

A. DRUG CRIMES

Drug-related crimes will continue to be a favorite topic for modification by the General Assembly. Numerous bills are always introduced to enhance the drug statutes already on the books. This should occur again in 1993. Mandatory sentencing for drug-related crimes has been a trend in the past and will likely continue.

B. GAMBLING

1. Horse Racing

The LRC Horse Racing Committee determined that a racing program could be implemented in North Carolina that could provide an economic impact of as much as \$250 million for the existing agribusiness and equine industries in North Carolina. The Committee determined that, for a successful and quality horse racing program, pari-mutuel wagering should be allowed in North Carolina.

The Committee recommends that a North Carolina Racing Commission should be created to develop the requisite expertise to determine the appropriate form of this horse racing program and pari-mutuel wagering. The Committee proposes submitting this issue to the people in a binding referendum.

2. Lottery

Legislation to create a State lottery has been introduced in every session of the General Assembly since 1983. Proceeds from such a lottery have been estimated to be in the range of \$150 - \$220 million. Given the past history and the paucity of present State revenues, it appears likely that lottery legislation will be considered again in the 1993 Session.

C. MARITAL RAPE

The Legislative Research Commission's Committee on Law Enforcement Issues reviewed North Carolina's laws on marital rape and carrying concealed weapons and is recommending the repeal of the defense that bars prosecution of a spouse for rape.

Specifically, the proposed legislation would amend the current statute, G.S. 14-27.8, that allows prosecution of a spouse for rape or sexual offense only when the couple is living separate and apart at the time of the alleged assault by deleting the provision. Thus, a spouse could be treated as any other person in a rape prosecution.

D. MOTOR VEHICLES (Jennie Dorsett - 733-2578)

Driving while impaired is always on the table, with various bills being introduced every year. Since recent legislation from Study Committees on the Safe Roads Act has not passed, it can be expected that some of those bills will surface. There is no formalized study on impaired driving presently in existence. However, there seems to be much grassroots effort, especially from MADD mothers and other victim organizations, to see the blood alcohol content lowered from .10 to .08 in North Carolina.

It is to be expected that a trend in recent years will again follow during the 1993 Session regarding drivers licenses. Various bills probably will be introduced to control certain behavior by restriction of the drivers license, such as staying in school, and staying off drugs.

There will also probably be an effort to expand the period of administrative license revocation beyond its present 10 days for drivers charged with impaired driving who blow more than .10 on the breathalyzer.

E. SENTENCING (Brenda Carter - 733-2578)

The North Carolina Sentencing and Policy Advisory Commission was established upon recommendation of the legislature's former Special Committee on Prisons in 1990, for the purpose of making recommendations to the General Assembly for the modification of sentencing laws and policies and for the addition, deletion, or expansion of sentencing options as necessary to achieve State policy goals. The Commission is expected to propose a comprehensive piece of legislation to restore certainty, consistency, and predictability to our criminal justice system. One of the primary goals is "truth in sentencing" - that is, when a defendant is sentenced by a judge, that defendant will actually do the time imposed by the judge. Under the statutory directives, the Commission will (1) classify crimes based on severity, (2) formulate sentencing structures, (3) establish a corrections population model that will link sentences to correctional resources, and (4) propose a community corrections strategy. The Commission's final report to the General Assembly is due within thirty days of the start of the 1993 Session.

The proposed modification of sentencing laws and policies will undoubtedly affect the need for additional prison beds and the types of beds - close, medium, or minimum. The Secretary of Correction has emphasized the need to construct more secure facilities for an increasingly assaultive felon population, and the Sentencing Commission is expected to recommend a structured sentencing plan which would send fewer people to prison - violent criminal and repeat offenders - for longer periods of time.

F. VICTIM'S RIGHTS -- See CONSTITUTION -- that heading

VII. ECONOMIC DEVELOPMENT (Walker Reagan and Cindy Avrette - 733-2578)

As a result of the weak state of the national economy, economic development policy issues are major concerns of citizens. Governor-elect Hunt also has emphasized economic development, so the subject should get considerable attention during the 1993 Session. Although it is unclear at this point the shape or direction the general effort on economic development might take, the discussions seem to be focusing on short-term targets (specific numbers of new jobs in a certain period of time) and

longer term economic growth and positioning North Carolina to be competitive in the international economy.

GPAC has approved major recommendations in this regard, including that:

1. The General Assembly mandate that a statewide economic development plan be developed and updated on a regular basis.
2. An Economic Development Council with power to make policy and priority decisions be created, to replace the Economic Development Board.
3. A planning unit in the Department of Commerce be established.
4. The newly created Economic Development Council be given authority to recommend allocations of economic development appropriations with base budget allocations based on outcomes measured by performance indicators, where appropriate.
5. The Extension Services play a more active role in economic development.
6. The Department of Commerce be restructured including consolidation of the regional offices of the Business and Industry Division and the Division of Community Assistance into three regional offices, with the top priority of these offices to be on community development and retention and expansion in rural areas.
7. The use of non-profits be continued, but base contracts on performance and move towards a goal of self-sufficiency for the Center for Microelectronics Systems Technology of the Microelectronics Center and for the Biotechnology Center.

It is expected that a strong push will be for a strategic economic development plan, encompassing all parts of economic development (education, infrastructure, recruitment, financing, tax policy, innovation), to be evaluated based on specific targets or measures based on outcomes, not inputs. Part of this planning will include examining ways to assist in local and regional development of infrastructure other than roads - i.e. water, sewer, telecommunications, natural gas - with focus on encouraging more higher skilled, higher paying jobs in the more rural communities.

VIII. EDUCATION

A. PUBLIC SCHOOLS (Mary Thompson and Jim Watts - 733-2578; Jim Johnson - 733-4910)

1. **Expansion of the Basic Education Program (BEP)** - The Legislature provided over \$23 million for the Basic Education Program in 1992. Since implementation of the BEP, over 7,500 teaching positions have been provided to the State's schools. The BEP has also provided help for at-risk students, clerical assistants, support positions, smaller class

sizes, new course offerings, additional supplies and materials, and expanded program activities.

Expansion of the Basic Education Program continues to be a central theme of education reform debate in North Carolina. Budgetary constraints and an increasing ADM (average daily membership) in the schools (projected annual cost - \$45-\$65 million) threaten BEP expansion efforts. Recent recommendations from interest groups have focused on expansion of resources with direct service relationships to students, including the reduction of class-size and providing services to "at-risk" children.

The Government Performance Audit Committee (GPAC) has recommended that the General Assembly continue to fund the BEP as scheduled in its primary focus, teachers and professional instructional support personnel. GPAC has also recommended that the remaining balance to be funded be redirected to address prioritized needs.

**2. School Improvement and Accountability Act -
Differentiated Pay**

1992 Amendments to the School Improvement and Accountability Act (referred to frequently as Senate Bill 2) should continue to stimulate debate over school-based management and differentiated pay. The 1992 Legislature provided \$29.5 million to be used for differentiated pay.

The original 1989 legislation was designed to improve student performance through increased flexibility and accountability. The 1992 amendments gave more control over local school improvement plans to teachers, parents and principals. The legislation also requires local school improvement reports, which are currently in the planning stage. Local systems must develop a new three-year plan to be put into place for the 1993-94 school year.

Further 1992 amendments to the School Improvement and Accountability Act collapsed certain State budgetary line items in an attempt to offer local school units greater fiscal flexibility. As part of the movement to create more program flexibility at the local level, the General Assembly may consider increased funding flexibility for local units in the 1993 Session.

As a balance, the General Assembly will likely continue the discussion regarding meaningful local student performance accountability. Building school improvement reports and using end-of-course and end-of-grade testing, as well as other indicators, are seen as the most likely "yardsticks" to be used to focus local communities and schools on gains in student performance.

GPAC has recommended that clearer linkages between local school accountability and funding for performance be established. The Committee has also recommended that funding formulas be simplified, including combining major non-teaching funding categories, in order to allow school districts to manage for results.

Important topics for the coming session related to the School Improvement and Accountability Act include: teacher professional development; time for planning and training; local school improvement reports; local school governance; and support for promising, innovative reform efforts.

3. Testing

The State's new testing program will be fully initiated during 1993. The General Assembly appropriated \$6 million in 1992 for the new end-of-course end-of-grade testing program to align the State's tests with revised curriculum and the thinking and practical skills students need to succeed. An additional \$1.7 million was appropriated for test scoring equipment to be used at the local level. Achievement levels have yet to be defined, and the public has yet to be educated on how this program will increase student achievement.

4. Alternative School Calendar and Extended Services

The Joint Legislative Education Oversight Committee has reviewed information regarding alternative school calendars and compulsory attendance. Committee discussion has included innovative calendar options that would provide academic support for children not achieving at grade level. Options include: year-round school with intersessional classes for low-achieving students; after and before school care and tutorial opportunities; and Saturday academies.

5. Free Public School - Who is entitled?

The Joint Legislative Education Oversight Committee will submit a bill to the General Assembly to clarify the categories of students who are entitled to a free public education. In addition to students domiciled in a school unit, the following groups of students who are actually living in a school district for reasons other than to attend school are entitled to a public education under the terms of the bill: foster and institutionalized children, the homeless, those whose parents have temporary appointments at academic institutions, those residing on federal and Indian lands, children of migrant workers, and those living with a nonlegal guardian who provides substantial support and supervision for the child and is willing to assume responsibility for educational decisions.

6. **Educational Leadership**

The Educational Leadership Task Force was established by the 1992 Session of the General Assembly to examine a variety of issues regarding public school principal and superintendent certification, training and development. The Task Force will report findings and recommendations to the Joint Legislative Education Oversight Committee in February.

7. **Teacher Training Task Force**

The 1992 Session of the General Assembly established a twenty member task force to review the progress that has been made on the thirty-nine objectives of the 1985 Teacher Preparation Task Force and to study additional areas of legislative concern. The Teacher Training Task Force will review both preservice and ongoing professional development for teachers and report recommendations to the Joint Legislative Education Oversight Committee.

GPAC has recommended that the Department of Public Instruction develop a comprehensive strategic plan for teacher development that identifies which types of training at what level are necessary to achieve the desired changes in teaching activities.

8. **Supplemental Funding Formulas (Jim Johnson - 733-4910 and Mary Thompson - 733-2578)**

The Supplemental School Funding Commission was established by the 1992 Session to examine how formulas for low-wealth, small system and critical needs funds work and whether any changes to the formulas should be made. \$9 million for low-wealth school systems and \$7 million for small school systems was appropriated by the Legislature in the last biennium.

Numerous questions regarding supplemental funding have yet to be resolved, including: How much effort can the State require low-wealth counties to make in order to retain eligibility, and what happens to counties that slip only slightly on local taxing obligations? Do these counties lose funding? Debate in the 1993-94 Session will center around these questions, as well as adequacy of current fiscal effort.

GPAC has recommended that small and poor school districts save costs through working cooperatively in order to deliver shared services. Joint services in such high cost areas as vocational education, special education and advanced course work at the secondary level offer the promise of greater cost-efficiency and improved delivery effectiveness.

9. **At-Risk Students (Robin Johnson and Jim Watts - 733-2578)**

The LRC's Committee on Students at Risk is recommending the creation of Family Resource Centers at elementary schools identified by

a percentage of free lunch students. These centers would be based on the Kentucky Family & Youth Services Centers Model. The idea is to fund a coordinator at each of the targeted schools to identify and coordinate existing community resources and services to be provided to any child, or his or her family. These resources and services include the school, public health department, department of social services, and whatever else is available in an individual community.

The advantages of this program are (1) it builds on existing resources and services, (2) it puts dollars into prevention rather than intervention, and according to experts, this will save money in the long-run, and (3) it allows localities to have flexibility to meet their own specific needs. The disadvantages are the cost and the barriers to making it work -- such as "turf" issues and the legal issues surrounding the sharing of confidential information.

10. Governance

Education governance, both at the State and local levels will continue to be a hot topic.

At the State level, it is likely that debate will continue over the balance of power between the elected State Superintendent, the appointed State Board of Education and the General Assembly. At the present time there is no agreement concerning the appropriate policy and administrative roles of each of these entities.

GPAC has recommended structural changes in public school governance and administration including the appointment of a State Superintendent by the State Board of Education, a major reorganization and downsizing of the Department of Public Instruction, modification of the State Board of Education appointment process and structure. The proposal would have the State Board appointed by the Governor and the General Assembly. The recommendation also includes that the Board of Education be restructured as a statutory board in the same manner as the North Carolina Community Colleges Board. The appointment of a State Superintendent and the restructuring of the State Board as proposed by the Committee would require Constitutional amendments.

At the local level, amendments to the Accountability Act have moved significant decision-making power to the school building. The legislation still leaves ultimate authority for local education with the local board, but the roles of principals, teachers, parents and other staff in educational decision-making at the building level will continue to evolve as the Act is implemented.

11. School Administrator Tenure

The current system of granting school administrators tenure has come into question by a variety of groups concerned with education reform. The groups advocating an alternative have called for a contractual system that provides a higher degree of managerial accountability to local school boards.

12. Violence in Schools

Increased reports of violence, including weapons at school, may cause legislation to be introduced to provide stricter penalties for violent acts on school campuses.

B. HIGHER EDUCATION (Jim Newlin and Charlotte Todd - 733-4910; Mary Thompson and Jim Watts - 733-2578)

1. Higher Education Accountability/Collaboration

The funding and delivery of services by these institutions may come under some scrutiny to see if they are providing services in the most efficient way to improve the workforce in the State. The current Community College and University accountability programs will also likely receive some level of discussion.

The GPAC Higher Education Study included a review of the Program and System Structure of the Community College System, Academic Program Planning within the University of North Carolina, Public Support of Private Higher Education Institutions, and analysis of the tuition and fee structure for higher education in North Carolina. Recommendations within these studies aim at redirecting resources to where they are needed most. The Committee found that the shift of financial obligations to students and their families is limited by constitutional provision; however, internal changes in how existing resources are used may fund some needed expansion and strengthening.

The three educational systems, public schools, community colleges and universities, will be examined to see how education service to the State can be better coordinated. Of particular concern to the Legislature is how higher education can collaborate more effectively with local public schools.

GPAC has recommended that the three education systems work in a more integrated fashion through the establishment of an "education cabinet", chaired by the Governor, to plan, design and coordinate programs across the systems on a permanent basis.

2. Education Capital Outlay Bonds

The 1992 Session engaged in a highly visible debate over education bonds for the purpose of construction projects at the Community College and University level. A \$1.2 billion proposal surfaced at one point that would have addressed all needs, including the needs of the public schools. Efforts to reach agreement on the bonds failed, but the discussion should reappear in 1993.

The University system has declared building needs of over \$300 million and the Community College system \$311 million to be considered in the coming session. The Department of Public Instruction is in the process of compiling a comprehensive analysis of local unit capital outlay needs and will have the report ready by the convening of the 1993 Session.

IX. ELECTION LAW (William R. Gilkeson - 733-2578; Gerry Cohen 733-6660)

A. VOTER REGISTRATION

In the 1992 Short Session, the General Assembly made major reforms in voter registration: allowing registration by mail, institutionalizing the already existing drivers-license registration, and holding the registration books open until 3 weeks before an election (instead of 4). Most of those changes will go into effect July 1, 1993.

In the meantime, Congress may well require the State to do some of those things and more if it passes the Motor Voter Act. Congress passed the act in 1992 but, as expected, President Bush vetoed it. President-elect Clinton has endorsed the bill and said he wants Congress to pass it early in 1993. Although the bill would govern only registration for federal elections, it probably would not be practical for the State to maintain a different system for other elections.

There may be legislative interest in making changes to the 1992 changes. Some of them will be consistent with the federal Motor Voter legislation, if passed, and some will not. The only guide is the bill as it passed Congress in 1992.

1. Limitation of 1992 changes

Some may want to tighten mail-in registration by requiring notarization or witnesses; Congress' 1992 bill would not have allowed that. Some may want to require mail-in registrants to appear in person the first time they vote (rather than vote absentee); Congress' 1992 bill would have allowed that. Some may want to move the 3-week close of registration back to 4 weeks; Congress' bill would have allowed that. Some may want a voter I.D. or signature requirement as a check on

fraud which would have been allowed under the 1992 Congressional bill.

2. **Expansion of 1992 changes**

Congress' bill would require reforms the General Assembly did not get to in 1992: making registration available in public agencies such as AFDC and unemployment offices, and allowing a purged voter to vote on election day if the person affirmed that he lived in the right place. There is some sentiment among N.C. legislators to allow registration on election day--something Congress' bill does not deal with at all.

3. **Computerization**

There has long been sentiment in the General Assembly to establish a Statewide computerized voter registration system such as exists in Minnesota, Kentucky, and in South Carolina. Secretary of State Edmisten has actively promoted the idea.

B. VOTING CHANGES

1. **No-excuse absentee voting**

To vote by absentee ballot, N.C. requires voters to say that they are sick or will be out of the county on election day. Some people lie about planning to be out of the county and vote absentee for convenience. They are never investigated. There is some sentiment to acknowledge convenience as a valid reason for absentee voting and remove the need to lie.

2. **Texas Early Voting**

Texas has gone a step further by allowing people to vote in person during a 17-day period ending 3 days before the election. They do not have to have a special reason. The county commissioners pick sites for this early voting. In the 1992 election, 40% of the Texas electorate voted this way. There is interest in it in N.C.

C. ELECTION ADMINISTRATION STRUCTURE

Alex Brock, who has been chief state administrator of elections since 1965, has submitted his resignation effective at the end of 1992, although it appears he is willing to stay on in that role until a successor is chosen. That development, plus a change of party in the Governor's office and the interest Secretary of State Edmisten has been showing in election administration, may prompt a legislative re-examination of the structure of election administration.

D. REGULATION OF CANDIDACY

1. Ballot Access Reform

There is recurring interest (spurred partly by pressure from the federal courts) in lowering the barriers that independent and third-party candidates face when they seek to get on the ballot in North Carolina. The reforms would chiefly be a reduced number of signatures on petitions and a later deadline for filing.

2. The Adding-Qualifications Issue

The State Supreme Court in 1992 struck down the "Resign to Run" law on the ground that by requiring mid-term elected officials to resign before running for another office, the General Assembly was adding a qualification to office that was not in the Constitution. That decision calls into question certain other statutory regulations of candidacy, such as the "sore loser" provision that prevents a defeated primary candidate from running as an independent or write-in for the same office in the fall.

3. Replacement of Candidates

Despite controversies, several questions remain concerning the replacement of party nominees who resign from a ticket. There has also been a running controversy for several years whether a primary candidate who dies should be dropped from the primary race, with votes counted only for surviving candidates (the present law), or whether votes should be counted for the deceased candidate so that the party committee can replace him on the ticket if he wins.

E. CAMPAIGN REGULATION

Proposals have been made recently to toughen the enforcement of campaign-finance laws by increasing penalties, requiring DAs to take a more active role, and computerizing records. In addition, other areas of concern include:

1. Negative Campaigning

There is always interest among legislators in dealing with this subject, but First Amendment protections of Free Speech severely restrict what can be done. A lawsuit is now pending before the State Supreme Court challenging the current law that prohibits anonymous derogatory publications against a candidate. An adverse decision could generate more legislative activity in this area.

2. The Tax-Checkoff Funds

There frequently are efforts to alter the two funds that taxpayers may support on their State Income Tax Return to provide public financing for campaigns.

X. EMPLOYMENT

A. MINORITY GOALS (Linwood Jones - 733-2578)

When it enacted the massive Highway Trust Fund in 1989, the General Assembly created a goals program to encourage more minority and female participation in highway construction and preconstruction contracts and highway purchase orders. The goals were set at 10% for businesses owned by racial and ethnic minorities and 5% for female-owned businesses. In response to a lawsuit by a low bidder whose bid was rejected because of a purported lack of good faith in securing minority subcontractors for the project under bid, the Department of Transportation suspended the goals program indefinitely.

It was determined that under the U.S. Supreme Court's decision in Richmond v. Croson, 109 S.Ct. 706 (1989), a study of minority contractor availability and utilization would be necessary to restore the program and protect it from further legal challenges. The Joint Legislative Highway Oversight Committee, created as part of the Highway Trust Fund package to oversee the Fund's operation, commissioned a study by an outside consultant to determine the extent of discrimination in the highway industry. The study is nearly completed, with a final report due back in late January, 1993. Its findings and recommendations will be used to formulate an appropriate program to enhance minority and female participation in highway contracts. Although the recommendations have yet to be released, public hearings held as part of the study indicate potential legislation not only on goals, but also on bonding requirements, bid preparation assistance, and other problems facing small businesses generally.

B. WORKPLACE SAFETY LEGISLATION (Linwood Jones - 733-2578)

The Legislative Research Commission authorized a study of workplace safety issues following the tragic September, 1991, fire at the Imperial Foods Processing Plant. The Fire and Occupational Safety Committee created by the LRC successfully pushed through 11 of its 14 proposals during the 1992 Short Session. For a thorough discussion of these bills, please see the publication entitled *Workplace Safety: 1992 Legislation*, available from the Legislative Library.

The Committee resumed its deliberations during the fall of 1992 and is recommending the following nine proposals to the 1993 General Assembly. Two of the proposals were considered but not enacted during the 1992 Short Session:

1. Products Liability Statute of Repose

Currently, if a person is injured or killed by a defective product more than 6 years old, the manufacturer of the product is generally not

liable. This 6-year statute of repose (which begins to run from the time of first sale, not the date of manufacture) can potentially terminate a person's right to sue even before there is an injury. The proposed legislation will extend the 6 year period to 10 years. This replaces a previous recommendation by the Committee for a 25 year statute of repose. Among the states that have the products liability statute of repose, 10 years is the most common repose period.

2. **Workers' Comp Death Benefits Statute of Repose**

There is also a 6-year statute of repose for the collection of death benefits under the Workers Compensation Act. The Workers Compensation Act provides death benefits to dependents of workers who die from work-related injuries, but only if the death occurs within six years of the injury. The proposed legislation would eliminate this 6-year period. However, the employee's dependents must still prove that the death resulted from the injury in order to recover death benefits.

3. **Civil Liability for Safety Guard Removal.**

The third piece of legislation -- imposing civil liability on employers for injuries resulting from their removal of safety guards -- was introduced in the 1992 Short Session but failed to pass. It allows an employee to sue his employer (rather than being restricted solely to workers comp benefits) if the employee is injured because the employer or supervisory staff removed a safety guard that is required by either the manufacturer or by OSHA. The Committee has rewritten the bill to address some of the questions raised during the short session. However, the bill still remains the most controversial of the package because the remedy, unlike under workers compensation, is based on "fault."

4. **Building Code Changes.**

The Committee has studied aspects of the State Building Code primarily because of the Code's fire prevention regulations. Under the proposed legislation, criminal penalties for violations of the Building Code would increase and the authority of local governments to levy local civil penalties for violations of the Code would be clarified.

5. **Workers' Comp Carrier Services.**

There was interest from the beginning of this Committee's deliberations in 1991 in taking advantage of existing private resources to enhance workplace safety. The proposed legislation takes a step in this direction by requiring the Commissioner of Insurance and the North Carolina Rate Bureau to develop a proposal under which the insurers writing worker compensation coverage in this State would be required to provide safety advice, and possibly inspections, to the employers they insure. The proposal would require additional implementing legislation to put it into effect.

6. **OSHA Review Board Decisions.**

The Safety and Health Review Board hears appeals of OSHA citations issued by the Commissioner of Labor. The Board is independent of the Department of Labor and has authority to reclassify the Commissioner's proposed penalties and to reduce them. Following criticism of the Board for its alleged reduction of penalties in an arbitrary manner, the Committee considered numerous options, including elimination of the Board and transfer of its functions to the Office of Administrative Hearings, requiring full-time hearing examiners and members, and limiting the Board's discretion in reducing and reclassifying OSHA penalties. The Committee finally settled on a proposal requiring (1) the Board and its hearing examiners to state their findings and conclusions in each case in writing and (2) the Board and the Commissioner to reach agreement on how to interpret the statutory factors for penalty reduction.

7. **Health & Safety Training**

This proposal establishes a State goal of requiring safety and health training for employees in all publicly-funded job-training programs and directs the State Community College system to provide such training for certain employees in pre-employment and in-service training programs.

8. **Choice of Physician in Workers' Comp**

This proposal allows an injured worker to choose a physician for treatment of the injury, without prior approval from the Industrial Commission.

9. **LRC Study Continued.**

This proposal would reauthorize the Fire and Occupational Safety Committee to continue its study of workplace safety in 1993 and 1994. The purpose of the continued study is to look at the results of the Inter-Agency Safety Reorganization Task Force Report (due March, 1993) and develop necessary implementing legislation for any reorganization, to monitor the effects of the 11 new workplace safety laws passed in 1992 (two of which won't be effective until mid-1993), and to consider other reforms in fire and occupational safety.

C. **WORKERS' COMPENSATION** (William R. Gilkeson - 733-2578)

Several states have had crises in workers' compensation insurance, leading to special legislative sessions. The chief problems in those states have been rising costs to the employer and carriers who have threatened to leave the state. Although costs have risen in North Carolina, our state still ranks near the bottom in employer costs.

1. **Cost Containment**
Various methods have been proposed to curb medical costs so that workers compensation does not become the "deep pocket" in the health care system. Other proposals, such as increased mediation of disputed claims, aim at reducing the role and cost of litigation in the system.
2. **Sufficiency of Funds**
The backlog of contested cases has spurred the Industrial Commission to seek more money for its claims-adjudication process. This issue may be related to legal-cost containment.
3. **Governance**
Insurance agents have proposed moving the Industrial Commission to the office of the Commissioner of Insurance, which regulates carriers' rates. The Industrial Commission is now appointed by the Governor.
4. **Exclusive Remedy**
Historically, workers compensation involved a trade-off: employees are compensated regardless of fault, and employers are free from tort liability. The exception was intentional injury by the employer. In recent years, the exception has been expanded, particularly in Woodson v. Rowland, 329 N.C. 330 (1991), which allowed a lawsuit in a workplace accident where the Supreme Court found that the employer intentionally engaged in conduct that was substantially certain to cause injury.
 - a. **Workplace Safety -- Removal of Safety Guards.** It has been proposed by the LRC Workplace Safety Committee that actions be allowed against an employer if a safety guard is removed from a machine by the employer or a supervisor and causes injury to the employee. (See Workplace Safety Legislation)
 - b. **Other Exceptions.** There may be other proposals for legislation making clear that specific types of employer conduct fit into the Woodson exception.
 - c. **Overturning of Woodson.** There has been some legislative interest in a statute overturning Woodson and returning to the narrow definition of "intentional injury" that used to be the law.
5. **Eligibility for Accident Compensation**
North Carolina's conservative workers' compensation doctrine compensates an injury by accident only if the accident was a "slip, trip, or fall." That doctrine has been liberalized for hernias and back injuries. Efforts to liberalize the doctrine for "extremities of the body" have not yet been successful, but may be attempted legislatively.

6. **Statute of Repose for Death Benefits.**
There is a proposal to eliminate the statute of repose that prevents an injured worker's dependents from obtaining workers compensation death benefits if the death occurs more than 6 years after the injury. See the section on Workplace Safety above.
7. **Workers' Compensation Reform.**
Earlier this year, the North Carolina Rate Bureau proposed a 58% increase in workers' compensation insurance premiums. The Commissioner eventually agreed to a 23% increase. Prior to the Commissioner's ruling, however, he appointed a Task Force to consider whether workers' compensation reforms are needed. Large workers comp rate increases in other states have often signaled imminent reform legislation. Potential reform legislation could include curtailing benefits and/or limiting medical costs, as well as other amendments. Any legislation would likely come from the Task Force, the insurance industry, or the business community.

D. EMPLOYMENT AT WILL

North Carolina traditionally has followed the "Employment at Will Doctrine," allowing an employer to dismiss an employee for a good reason, a bad reason, or no reason at all. Some recent court cases and statutes have limited that doctrine, but except for those limitations, it still stands. Among the options which may be considered are the following:

1. **Abolition**
One idea would be to abolish the doctrine, as Montana has, and require a showing of good cause before an employer may fire anyone.
2. **Further Exceptions**
Another idea would be legislatively to add specific examples of reasons for dismissal which would be "against public policy" and therefore impermissible. Recent state appellate decisions have been moving in that general direction. For example, the discharge of an employee for refusing to work below minimum wage is impermissible, Amos v. Oakdale Knitting Co. 331 N.C. 348 (1992), and for refusing to violate federal law by driving in excess of federally-mandated time periods, Coman v. Thomas Manufacturing Co. 325 N.C. 381 (1989), 105 N.C. 88 (1992).

XI. ENVIRONMENT (George F. Givens, Sherri Evans-Stanton, Barbara Riley, and Steve Rose - 733-2578; Susan Iddings and Emily Johnson - 733-6660)

A. GENERALLY

Many of the following issues are likely to be matters on which the incoming administration will make recommendations. These recommendations will be a major factor in determining which proposals are actually considered by the General Assembly, and for this reason the following paragraphs should be regarded more as an attempt to identify issues that may be addressed, rather than as a prediction of specific issues that are likely to arise.

1. Funding

The development of additional mechanisms to provide funding for environmental regulatory programs, natural resources programs, and public projects such as water supply, wastewater treatment, and municipal solid waste management is likely to continue to be an important issue. In recent years, and particularly since the onset of the current "budget crunch" in 1989, there has been a move to have environmental regulatory programs funded by fee receipts rather than appropriations from the General Fund. The environmental community has generally supported these proposals both as an additional revenue source and as a disincentive to polluters, and several environmental groups jointly proposed a "green budget" in 1991. Most environmental programs now are supported at least in part by fee receipts. However, few of the fee programs involve an escalating fee schedule that might act as a disincentive for pollution and waste generation.

Local government is interested in additional funding for water and wastewater projects and to meet the solid waste reduction goals that were adopted by the General Assembly in 1989 and 1991. One potential source of funding that is likely to receive some attention is a Statewide bond issue, at least for water and wastewater products. Funding issues relating to municipal solid waste management are discussed below.

2. Permitting Process

There is growing concern about the process by which applications for permits are reviewed and permits, including permit modifications and renewals, are issued. These concerns are common to virtually all environmental regulatory programs, and most representatives of the interested parties (the regulated community, environmentalists, and agency personnel) have concerns about the time, expense, and complexity of the permit review process. This is not to say that the process is ineffective. Most of the information available seems to indicate that the environmental regulatory programs in North Carolina

compare favorably with those of other states. Prior studies have also indicated that a number of factors, including the requirements of federal environmental programs that are implemented by the State and the unique requirements of each program, preclude a single permit application form and review process for all permits that may be needed for a particular project. Recent discussions that are likely to translate into issues for the General Assembly have focused on identifying ways to improve the efficiency and effectiveness of particular permit programs. In particular, discussion has centered on how to expedite the initial permit review process while assuring that all needed information is collected and evaluated and how to provide for an efficient review or appeal of initial permit decisions in a manner that protects the interest of the permit applicant, potentially affected third parties, and the State and its citizens.

3. **Administrative Rules**

A related topic that may receive attention is the development of administrative rules, particularly with regard to the role of rules in environmental protection and their effect on economic development. Concerns in this area involve both the substance and impact of particular rules and the general process by which rules are developed and adopted.

4. **State Environmental Policy Act**

The North Carolina Environmental Policy Act of 1971 (SEPA), which requires the preparation of environmental impact statements for certain projects that are not covered by the National Environmental Policy Act, has been the subject of some discussion in recent years. In 1991 the General Assembly made the Act permanent, and in 1992 the General Assembly slightly expanded the scope of the Act and updated it in several ways. The most likely SEPA issues to be confronted by the 1993 General Assembly are (1) whether to repeal the current exemption from SEPA for municipal solid waste landfills that are developed by local governments, and (2) whether to extend SEPA coverage to privately developed municipal solid waste landfills and other private projects.

B. **AIR QUALITY** (George Givens and Sherri Evans-Stanton - 733-2578)

In 1990 the Congress enacted extensive amendments to the federal Clean Air Act. These amendments, which are being implemented over a period of several years, dramatically expand both the scope and requirements of the federal air quality program and the requirements that are imposed upon the states. Since 1990 there has been an ongoing process of analyzing the federal requirements as they apply to North Carolina and developing responses appropriate to meet in a timely manner the mandates of federal law and implementing regulations adopted by the Environmental Protection Agency.

As a part of this response, in both 1991 and 1992 the General Assembly enacted legislation to allow the State to meet various federal requirements. Similarly, legislation dealing with other aspects of the air quality program will be considered by the 1993 General Assembly. Two issues are likely to receive particular attention. The federal act requires that the State program be supported by fees imposed on sources of air pollution. The Environmental Management Commission is currently authorized to adopt a schedule of fees applicable to stationary sources. The issue most likely to be raised during the 1993 General Assembly is whether to broaden the fee base by imposing fees on mobile sources (motor vehicles) and how such fees would relate to sources of revenue that have traditionally been used for highway construction and maintenance. A second issue results from the adoption by the Environmental Management Commission of an air toxics reduction program in 1990. This program uses health-based standards, as contrasted to the federal program, which uses technology-based standards. These two programs will have to be merged or, in the view of some, the State air toxics program should be suspended or repealed.

C. WATER QUALITY (Sherri Evans-Stanton - 733-2578; Emily Johnson - 733-6660)

1. Generally

Most water quality issues will probably await Congressional action on amendments to the federal Clean Water Act, which is now up for reauthorization. The State's Water Supply Watershed Protection Program was the subject of much discussion in the latter part of 1992 and the early part of this year. During that time the Environmental Management Commission was considering the adoption of rules to implement the program. Neither developers, who have concerns about the entire program, nor environmentalists who regard the rules that the Commission ultimately adopted as too weak, are entirely satisfied with the program at this point, but both groups can claim some success in achieving their respective goals. Whether this means that the 1993 General Assembly will consider proposals to either strengthen or weaken this program remains to be seen.

2. Bond Bill for Water and Wastewater Projects

The Water Issues LRC will recommend a bond bill for water and wastewater projects in the amount of \$120 million. Twenty million dollars will go in the Clean Water Revolving Loan and Grant Fund; the other \$100 million dollars will be placed in a separate fund. Local government is particularly interested in this because they want to restore funding that the General Assembly took from local government in 1991 to fund the State match to the federal clean water fund.

3. **Wastewater Spray irrigation**

A pending permit application by the Town of Atlantic Beach in Carteret County for wastewater spray irrigation has resulted in much press coverage. As a result, this issue may be revisited by the legislature.

D. **LAND RESOURCES** (George Givens and Sherri Evans-Stanton - 733-2578)

The Division of Land Resources is currently circulating drafts of amendments to the Mining Act, the Sedimentation Pollution Control Act, and the Dam Safety Act, which provide the statutory authority for the three programs administered by that Division. The proposed amendments to the Mining Act are more substantive and are particularly significant in that the Mining Act has received little attention since its initial enactment in 1973. In the past, representatives of the mining industry have opposed amendments to the Act, but seem more open to some changes this time around. Environmentalists and others who support mining act reform may regard the departmental proposals as insufficient.

E. **WASTE MANAGEMENT**

1. **Solid Waste** (Susan Iddings - 733-6660; Sherri Evans-Stanton - 733-2578)

In 1989, the General Assembly adopted a Statewide recycling goal of 25% by 1993. In 1991, this goal was restated as a solid waste reduction goal of 25% by 1993 and 40% by the year 2001. The effort to meet this goal gives rise to a number of issues, not the least of which is additional funding for State planning and regulatory personnel and for local solid waste management facilities and services. Both tipping fees and advanced disposal fees have been proposed in the past, but neither has thus far achieved widespread support. Both approaches are likely to receive additional attention in 1993. The one advanced disposal fee now in place, the 1% scrap tire disposal tax, has proved inadequate to address the scrap tire problem and a proposal to increase this tax will probably be considered in 1993. In addition, DEHNR may propose permit fees to provide additional funding for State planning and regulatory programs.

Scrap tires are one example of "difficult to manage" solid waste. Other examples include antifreeze and used oil. There may be proposals to address these particular types of waste and toxicity in packaging.

2. **Hazardous Waste** (George Givens - 733-2578)

In 1992, the United States Supreme Court decided several cases involving the interstate transportation of waste. These decisions confirm the principal that, absent specific Congressional authorization, a state may not erect barriers against the importation of waste into that state

based on the out-of-state character of the waste. Also in 1992, the Environmental Protection Agency began reconsidering its rules under which each state must assure that it has adequate capacity to manage the hazardous waste that is generated within the state. The net effect of the Supreme Court decisions and EPA rulemaking is that North Carolina is relieved of immediate pressure to site a hazardous waste management facility. What remains controversial is the ongoing private siting effort by Thermal-KEM, Inc. to develop a hazardous waste incinerator near the Town of Woodland in Northampton County.

3. **Low-Level Radioactive Waste (George Givens and Sherri Evans-Stanton 733-2578)**

The State continues its efforts to site a low-level radioactive waste disposal facility to meet its obligations under the Southeast Compact. Two sites, one in Richmond County and one on the Wake/Chatham County border, are under review. Both of these sites are subject to intense local opposition.

Another area of concern is the development of markets for recyclable materials. Among the proposals likely to be discussed are mandatory recyclable content and State purchase of goods with recycled content.

The term "flow control" refers to several issues related to the ability of local governments to implement recycling, waste-to-energy, and other solid waste management programs. Flow control issues arise out of the fact that solid waste, or at least some portion of the solid waste stream, has economic value and the fact that this value is an important element in generating revenue with which to finance the construction and operation of solid waste management facilities. Flow control involves questions of ownership and transfer of ownership of solid waste, separation of particular materials from the solid waste stream at its source, deposit of waste in a particular form at a particular location, and limitations on access to, and participation in the market by, competing haulers, disposal facilities, and others engaged in the solid waste management business.

Finally, there is increasing interest in public participation in the selection of sites for landfills and other solid waste management facilities and in the process by which applications for permits for those facilities are reviewed and approved. In particular, there is a growing concern that these facilities pose an unfair burden on areas in which minorities and the poor are concentrated.

F. ENVIRONMENTAL AGENCY ORGANIZATION (George Givens - 733-2578)

In 1989 the General Assembly abolished the Department of Natural Resources and Community Development and replaced it with the Department of Environment, Health, and Natural Resources (DEHNR). At that time, the community development functions were transferred to the Department of Economic and Community Development (renamed the Department of Commerce in 1992) and the health functions under the former Division of Health Services (DHR) in the Department of Human Resources were transferred to the new Department of Environment, Health, and Natural Resources. The regulation of pesticides, which is arguably an environmental regulatory program, remains with the Department of Agriculture.

The 1989 reorganization was accomplished on the agency level, that is, the General Assembly transferred administrative agencies by statute. Since 1989, some realignment on the basis of functions and programs has been accomplished by the General Assembly and some by action within the Department itself. The 1989 reorganization did not attempt to address the organizational, powers, functions, and duties, of the boards, commissions and councils within DEHNR. Against this background, several issues relating to the organization of DEHNR remain. The 1989 reorganization had the effect of splitting off public and personal health from funding (Division of Medical Assistance) and health facility licensure (Division of Facility Services), both of which remain in the Department of Human Resources. Thus, there is a question as to whether some health programs should be returned to DHR or consolidated with the other health related programs now in DHR into a new Department of Health.

There continues to be considerable debate among environmental and agricultural interests about transferring the Pesticide Division and the Structural Pest Division, which are both now located in the Department of Agriculture, to DEHNR.

With regard to the realignment of boards and commissions, the most pressing issue arises from the fact that rulemaking for the Division of Solid Waste Management, which is now located within the environmental area of DEHNR, continues to be the responsibility of the Commission for Health Services. There are also a number of other less significant issues relating to the organization, powers, duties, and functions of the boards, commissions, and councils within DEHNR. Also, there has been some discussion as to the desirability of creating a full-time, professional environment management commission, which would absorb the functions of a number of the part-time, "citizen" commissions now under DEHNR. Such a commission could act both as a rulemaking body and as a quasi-judicial body that would make final decision in contested cases.

XII. FAMILY LAW (Brenda Carter and Lynn Marshbanks - 733-2578)

A. ADOPTION LAWS REWRITE (Walker Reagan - 733-2578)

The current adoption law, which was initially adopted in 1949, is being rewritten by the General Statutes Commission to modernize and bring the law up-to-date in light of the current needs and practices across the State, nation, and the world, in the area of adoptions.

B. DAY CARE

Last Session, House Bill 1062 would have lowered the child-staff ratios and group sizes for day care. A similar bill probably will be reintroduced in the 1993 Session. Currently, the minimum requirements are set by the Day Care Commission by rule. HB 1062 would have phased in reductions in child-staff ratios and group sizes over a four-year period. Example: currently a child day care facility can have no more than seven babies (0-12 months) per staffperson; a group may consist of no more than fourteen babies. If the changes were adopted, a facility could have no more than four babies per staffperson and no more than eight babies in a group. The ratio numbers and the group size numbers depend, and would continue to depend, on the age of the child.

Supporters of lowering child-staff ratios and group sizes include child advocacy groups, some parents, and some day care providers. Their opinion is that "quality" day care is not possible in large groups or with more children per staffperson, and that there is greater turnover among day care workers where child-staff ratios are greater. They argue that children do not get the attention that they need and may even be neglected. Governor-elect Hunt has said that quality day care/preschool for children will be one of his top priorities. Opponents include other parents and other day care providers, particularly providers who care for children from lower-income families. They argue that lowering the ratios and group sizes will raise providers' costs considerably, since they will have to hire additional staff, and that the cost would be passed on to the parents, many of whom cannot afford to pay more for day care.

C. FAMILY AND MEDICAL LEAVE

In the last three sessions, bills have been introduced that would have entitled employees to family leave. Congress passed a family and medical leave bill in 1992, but President Bush vetoed the bill. The Commission on the Family has been considering a bill, modeled on the federal bill, that would provide for family and medical leave. As written now, the bill would provide for 12 weeks of leave per year for employees working for employers with 50 or more employees. The leave would be: (1) for the birth or adoption of a child, (2) to care for a seriously ill parent, spouse, or child, or (3) for the

employee's own serious health condition. If the Commission decides to recommend the bill to the 1993 General Assembly, the main opposition will probably be from the business community. Groups supporting the legislation presented statistics to the Commission indicating that only about 5% of the businesses in North Carolina -- the largest businesses -- would be affected by the legislation, and that over half of the employees in the State would be affected.

XIII. FINANCIAL ISSUES (Walker Reagan and Terry Sullivan - 733-2578)

A. FINANCIAL INSTITUTIONS REGULATORY AGENCIES CONSOLIDATION

The effort to consolidate the State's regulation of banks, savings and loan institutions and credit unions under a single regulatory agency will be renewed in 1993. North Carolina is only one of four states that has yet to consolidate the regulation of these institutions. Such a consolidation could result in some economy of scale and could allow for cross training of examiners and raise the departmental career ladder, allowing North Carolina to keep more experienced, better trained regulators and examiners. The State Banking Commissioner anticipates this issue arising.

B. INTERSTATE BANKING

1. Branching

The Commissioner expects that a proposal will be made to authorize banks to "branch" across state lines without having to set up a separate corporation or holding company in the new state. This Act would also be a reciprocal act and would be modeled after the Act adopted last year in New York. It is agreed that the adoption of this Act would keep North Carolina at the forefront of banking regulation and could strengthen the position of North Carolina banks nationally.

2. National interstate banking

A proposal probably will be made to expand North Carolina's law on reciprocal interstate banking, currently limited to the Southeast (Maryland to Texas), to the entire nation. As with the current law, before an out-of-state bank could come to North Carolina, the home state of that bank would have to permit a North Carolina bank to go there.

C. TAXATION -- See that heading

XIV. GENERAL ASSEMBLY (Terry Sullivan - 733-2578)

A. AMERICANS WITH DISABILITIES ACT COMPLIANCE (Giles Perry - 733-2578)

The Legislative Services Commission has established a Committee to study what the General Assembly must do to comply with the provisions of the federal Americans with Disabilities Act. The scope of the study extends to equal access to facilities, employees, personnel policies and practices for applicants and legislative employees, and equal access to the legislature as an institution, for example, signers for committee meetings. The Committee may propose changes to statutes, rules of the chambers, and practices to assure equitable treatment of the disabled.

B. CAPITAL PROJECTS

GPAC recommends the creation of a permanent standing structure in each house to review and coordinate the authorization and funding of capital projects.

C. ETHICS AND LOBBYING

A LRC committee is recommending: (1) the repeal of the Legislative Ethics Act and the creation of a State Ethics Commission to oversee ethical conduct of State officers, including legislators and employees and certain local government officers and employees; (2) the extension of the lobbying law regulation before the executive branch. The present legislative exemption to the lobbying law would be limited to official duties. See **STATE GOVERNMENT, GENERALLY** for more details.

D. Lieutenant Governor's Role -- see CONSTITUTION

E. STATE GOVERNMENT PERFORMANCE AUDIT (Curtis Clark - 733-7283)

The recommendation of the GPAC will take a great deal of the standing committees' time, especially that of the appropriations committees. Its major recommendations are set forth briefly under the substantive headings in this paper.

XV. GOVERNOR AND COUNCIL OF STATE (William R. Gilkeson - 733-2578)

See CONSTITUTION

XVI. HUMAN RESOURCES

A. AMERICANS WITH DISABILITIES ACT (Robin Johnson - 733-2578)

The federal Americans with Disabilities Act (ADA), effective January 26, 1992, requires State and local governments, and any of their departments, agencies, or other instrumentalities, to modify programs, services, and activities they provide to allow the disabled to participate in and benefit from them. Structural changes to existing facilities must be completed by January 26, 1995. A number of capital improvements and other funds may be necessary to comply with the ADA.

Compliance with this law does not require making each existing facility accessible to and usable by disabled individuals and does not require any action that would result in undue financial and administrative burdens. The head (or a designee) of each public entity, however, must make and document each determination that a change would result in undue burdens after considering all resources available for use in funding and operation of the service, program, or activity.

B. AGING (John Young - 733-2578)

As we approach the next century, dramatic changes are expected in the demographic profile of North Carolina which will have direct impact on the State's health and human services systems. Between 1980 and 2010, the population of older adults will have doubled to over 1.1 million. Older adults now compromise the fastest growing segment of the population. Between 1980 and 1990, North Carolina experienced a growth rate of 33% for individuals 65 and over compared to a growth rate of 12.7% for the State as a whole. The rapid aging of the citizens of the State will mandate attention to increasing needs for hospitals and health care, group care, housing, in-home and community based services, recreation and a wide range of supportive services and programming needed and used by older adults and their families.

Four out of five elderly people with long-term care needs depend on family and friends to provide the services they need, rather than entering a nursing home. In recent years, State legislative efforts have emphasized providing community-based services as alternatives to more costly institutional care. In 1988, the General Assembly provided the first significant state funding for a comprehensive system of in-home services. The original \$6 million appropriation has remained constant while costs and demands for services have increased. The question of increased funding will be an issue in the 1993 General Assembly.

The reimbursement policy and regulation of nursing homes and rest homes is a perennial concern as lawmakers attempt to control costs and

measure quality of care. Nursing home costs have a great effect on total Medicaid costs because the Medicaid program is the largest payor for nursing homes. The legislature will be faced with approximately a 30% increase in the Medicaid budget for the 1993-94 year.

The General Assembly also be faced with issues related to rest home reimbursement. There are no federal funds used for payment of care for rest home residents. The statutes authorize the implementation of the State/County Special Assistance of Adults to supplement the income of those low income persons who need care in rest homes. Historically, the General Assembly has directly established the SA Program reimbursement rate in the Appropriations Act. A number of legislative commissions and outside reports have found that this is an informal system that is based on no objective data.

C. ALTERNATIVE MEDICINE (Linwood Jones - 733-2578)

In 1985, the North Carolina Board of Medical Examiners brought disciplinary charges against a physician for practicing homeopathy, a form of medicine that relies on highly-diluted natural substances. The grounds for the discipline were that the practice of homeopathy is not considered the "prevailing" standard of medicine in North Carolina. In the ensuing seven years, the case wound its way through State and federal courts before finally coming to an end in the Fourth Circuit Court of Appeals in June, 1992. The Fourth Circuit upheld the Board of Medical Examiners, despite contentions that the Board had proven no harm or risk of harm to the physician's patients from the use of homeopathy.

After a brief debate in the 1992 Session on this case and its implications and increased interest in alternative health care generally, the Legislative Research Commission created an Alternative Medical Practices Committee to recommend a State policy on alternative medicine. The Committee has responded by recommending the creation of separate licensing boards for naturopaths, acupuncturists, and physicians (MDs) who want to practice homeopathy and other alternative forms of medicine. The physicians practicing alternative medicine would be under the jurisdiction of both the Board of Medical Examiners and the proposed Board of Complementary Medicine.

XVII. INSURANCE (Linwood Jones, Sally Marshall and Lynn Marshbanks - 733-2578)

A. ACCESS TO HEALTH CARE AND CONTROLLING HEALTH CARE COSTS

There are more than two million North Carolinians who are uninsured or underinsured, and their numbers are growing. The health of these people is compromised because they do not obtain preventive care, they delay seeking care when they become ill so that they are much sicker by the time they enter the health care system, and many providers will not treat them. They also place a burden on those who have adequate insurance because the cost of their care is shifted to those who can pay through higher hospital and doctor bills and through higher health insurance premiums. It is estimated that the cost of treating the medically indigent in North Carolina is \$4.6 billion. The problem is exacerbated by health care costs that are rising much faster than general inflation.

The General Assembly's Commission on Access to Health Insurance, the Institute of Medicine's Access Forum, and the N.C. Health Access Coalition are just a few of the State groups working on the problem. The major players are insurance companies, businesses, health care providers, hospitals and other health care institutions. These players have much to lose with any major reform. For example, insurance companies may be restricted in their selection of risk and in the amount they charge in premiums, businesses who do not currently provide health insurance for their employees may be required to do so or to pay into a fund for that purpose, and rate controls may be imposed on health care providers.

The General Assembly's Commission on Access to Health Insurance is likely to recommend a "managed competition" bill. This is the same health care reform idea proposed by President-elect Clinton. The basic idea is to control health care costs and guarantee universal access by pooling everyone (with the possible exception of large businesses) into huge purchasing pools that are geographically based. Everyone would purchase health insurance coverage through the pools. Groups of insurance companies and health care providers (networks) would compete for the opportunity to sell a predetermined benefit package through the pools. The pools would select qualified networks on the basis of price, quality, consumer satisfaction, etc. Everyone would choose a qualified network to provide his or her health care. Financing might be through a combination of assessments on employers and employees and State revenues. There may be an overall cap on health care spending and limits on the rate of growth in health care spending.

It is difficult to predict what the General Assembly would do with a managed competition bill. Some people would prefer to do nothing, and

hope that Clinton can get major health care reform through Congress. Those who spend any time looking at the problem conclude that significant reform is necessary to deal with the problem effectively. While the cost of significant reform is quite high in the short run, doing nothing will prove to be even more expensive.

- B. **WORKERS COMPENSATION -- See EMPLOYMENT: WORKERS COMPENSATION**

XVIII. LOCAL GOVERNMENT

- A. **CORRECTIONS FACILITIES -- See CRIMINAL LAW AND PROCEDURE: SENTENCING**
- B. **ECONOMIC DEVELOPMENT -- See that heading**
- C. **EDUCATION -- See that heading**
- D. **ENVIRONMENT -- See that heading**
- E. **HAZARDOUS MATERIALS EMERGENCIES (Barbara Riley - 733-2578)**

Since 1989, over 1,800 chemical incidents are reported to the North Carolina Division of Emergency Management each year from every region in the State. These incidents involve both transportation accidents and mishaps at fixed facilities using or storing hazardous materials. North Carolina has more than 95,144 functional miles of interstate highway over which hazardous materials are transported and more than 6,486 facilities that are required under federal law to file reports on quantities of hazardous or very hazardous materials present at their facilities.

In 1989, federal OSHA regulations on this matter became effective. They require minimum thresholds of training and equipment for persons responding to a hazardous materials emergency.

The cost of equipping and training a hazardous materials (hazmat) emergency response team taken together with the low frequency of incidents in some jurisdictions, makes establishment of hazmat teams infeasible for many local jurisdictions.

Legislation being considered by the LRC Study Committee on Emergency Management Issues would set up a regional response program for hazardous materials emergencies to be administered by the Division of Emergency Management. The system will have at least six hazmat teams. There will also be 24-hour dispatch and communications through the

Division of Emergency Management's Operations Center in Raleigh. The Secretary is to seek the advice of a Regional Response Team Advisory Committee in adopting rules.

The Secretary would also have authority to contract with units of local government for the provision of a regional response team.

The proposal also contains provisions for recovery of response costs from parties responsible for a hazardous materials accident.

F. STATE TAX FUNDING (Cindy Avrette - 733-2578)

The Fiscal Trends Study Commission is recommending that the State convert the present funding system for the tax-sharing of money to local governments from an annual appropriation to the prior method of earmarking certain taxes, effective with the 1993-94 fiscal year.

History:

There are two types of State tax distributions to local government: (1) tax reimbursements and (2) tax-sharing and state-collected local revenue. Tax reimbursements are monies sent to local units as compensation for the 1985 and 1987 repeal of certain local taxes, partial exemption of some taxes, and increased exemption of one tax. Tax-sharing and state-collected local revenue are monies sent to local units that represent a share of state taxes (excise taxes on beer and wine and franchise gross receipts taxes on utility companies) and state collection of a formerly local tax (intangible personal property taxes).

In 1990, the laws providing for this revenue sharing were changed in order to balance the State's balance sheet. The amounts that were formerly earmarked from the tax proceeds and held in a liability reserve for distribution to local governments were credited to the General Fund to be appropriated annually.

In 1991, the State froze the amount of revenue distributed to the locals at the dollar amount that should have been distributed to them under each statute in the 1990-91 fiscal year. This was a drastic change from the fixed percentage of tax revenues they had been receiving. Under the freeze, the locals do not benefit from any growth in revenues from these taxes. The amount was calculated as "should have been" because the Governor, in order to balance the State budget, withheld some of the distributions.

In 1992, the General Assembly provided that the reimbursements to local governments would be provided by earmarking a fixed amount of the corporate income tax revenue. This removed the funds from the Current

Operations Appropriations Act, but it did NOT remove the freeze on the amounts.

The Fiscal Trends Commission proposal concerns the tax-sharing monies but the Commission is not planning to make any recommendations on reimbursements. The proposal would return the funding system to the prior method of earmarking certain taxes (intangibles, excise tax on beer and wine, franchise tax on utility gross receipts). This not only removes the funds from the Current Operations Appropriations Act but also restores the growth.

G. STATEWIDE COMPREHENSIVE PLANNING (Carolyn Johnson - 733-2578)

The LRC's Statewide Comprehensive Planning Committee recommends establishing a North Carolina Partnership for Quality Growth. The Partnership is to study growth and development issues and develop appropriate initiatives to promote comprehensive and coordinated planning on the local, regional and State levels that would guide growth and land use, foster economic development, protect and preserve natural and cultural resources, promote efficient infrastructure development, transportation systems and affordable housing, and enhance the quality of life.

The Partnership will be required to make an interim report to the 1994 Session and a final report, including legislative proposals, to the 1995 Session.

H. CABLE TV REREGULATION -- See UTILITIES

I. PUBLIC RECORDS/OPEN MEETINGS -- See STATE GOVERNMENT, GENERALLY

XIX. PERFORMANCE AUDIT (Curtis Clark - 733-7283)

The Performance Audit of State Government is scheduled for completion during January, 1993. Major actions by the LRC's Government Performance Audit Committee on December 29 and 30, 1992 are under substantive divisions of this paper. Other recommendations include:

- A. Streamlining the workforce in several areas by reducing layers of management and eliminating narrow spans of control. Agencies specifically identified during this analysis include:
 - Department of Correction
 - Department of Transportation

- Department of Public Instruction
- Department of Human Resources
- Department of Commerce

Once implemented, the organizational recommendations are expected to save approximately \$78 million annually involving approximately some 5,000 positions.

B. Consolidating State facilities to reduce long-term operating costs, including:

1. Consolidating approximately 30 small, inefficient prison facilities into four larger, regional units. Annual operating cost savings expected are \$14 million annually.
2. Moving from large, State-operated mental health institutions to more community-based services. Downsize State institutions to more efficient sizes to serve the State's needs. Annual operating cost savings expected are \$9 million.

C. Health care costs the State approximately \$3.5 billion annually. Medicaid and the State Health Plan costs comprise the majority. Specific recommendations include:

1. Greater use of Managed Care programs.
2. Changes in reimbursement methodologies to control cost increases. Use Diagnostic Related Groupings (DRGs) and Peer Groupings to more accurately reflect cost of services.
3. Establish the Office of Health Care within the Office of the Governor to coordinate the management and purchase of health care by the State.

Annual operating cost savings expected are \$50 to \$75 million.

D. Reform of the State's Management Systems to focus on results and hold managers accountable by:

1. "Pilot Testing" performance budgeting in the areas of environment and health.
2. Reforming the personnel management systems to provide appropriate management flexibility and afford employees an opportunity to advance on "career tracks" without moving into management.

3. Reforming purchasing practices to assure innovative and cost effective purchasing strategies.

XX. PERSONNEL (Sandra Timmons - 733-2578)

A. GPAC FINDINGS AND RECOMMENDATIONS (Curtis Clark - 733-7283)

In September, GPAC issued its Phase I draft findings and recommendations on its audit of the State's personnel systems. The report covered a number of very sensitive areas: the State's classification and compensation system, elimination of the current longevity program, decentralization of the personnel function, redefining the role of the Office of State Personnel, selection procedure for the position of State Personnel Director, equal treatment for temporary employees, retirement and health benefits, benefits for law enforcement officers, training needs, and personnel management offices in each of the three branches. Although there is no way to forecast which specific recommendations may be preferred during the Session, members can expect very heated responses from numerous quarters, including other members, agency personnel, employee groups such as the State Employees Association of North Carolina, North Carolina Association of Educators, and North Carolina Association of County Commissioners, and employees themselves on any of the above listed areas that may be addressed from the GPAC recommendations.

Additionally, GPAC was asked to review the issues raised by the Systems Design group during their 1991-92 controversial study of law enforcement officers. Some of their findings are similar and may be at least as emotionally charged, if not as controversial. These issues include:

1. Eliminating of the automatic annual merit pay increases for State Highway Patrol officers.
2. Revising or repealing the existing special separation allowance for State, as well as local law enforcement officers.
3. Phasing out the Alcohol Law Enforcement Division and shifting responsibility for liquor law enforcement to the Alcohol Beverage Control Commission.
4. Civilianizing previously identified positions upon vacancy.
5. Restructuring the functions and responsibilities currently assigned to the enforcement unit of the Division of Motor Vehicles.

6. Consolidating the 30 smallest and most inefficient prisons.

B. MEDICAL COVERAGE FOR STATE EMPLOYEES

The Comprehensive Major Medical Plan provides health benefits to 228,105 active teachers and State employees, 74,293 retirees, and 162,095 eligible dependents. By far, the most important issue facing the Plan is the continued rapid increase in health care costs. While the Plan has taken measures to contain costs, such efforts will have only a limited effect when compared to overall cost increases.

Noting that the personnel programs are fragmented, the GPAC has recommended that the Plan be shifted organizationally to report to the State Personnel Director. The goal is to allow the State to manage, implement and evaluate benefit programs from a total compensation perspective.

The prescription drug benefit was changed during the 1991 Session to reimburse claims based on average wholesale price in order to realize \$30 million in savings for the 91-93 biennium. Primarily due to pressure from the pharmacy community, several bills to change the benefit were introduced during the 1992 Session. While none of the bills were successful, it is expected that there will be another wave of attempts to change the prescription drug benefit.

C. SEANC COMPREHENSIVE COMPENSATION PACKAGE

In the 1992 Short Session, the State Employees Association of North Carolina (SEANC) proposed the implementation of a comprehensive compensation package. It was approved, as amended, in the Senate but was referred to House Appropriations after being reviewed in the House Public Employees Committee. Awarding performance increases as a lump sum separate from base salary and calculating increases as a percentage of the midpoint comprised the major differences between the proposed program and current practice. Members can expect to see this proposal again in the upcoming session, and probably with greater fervor, given that SEANC disagrees with GPAC's recommended change in the State's compensation plan, which may be offered during the session as well.

The Study Commission on the State Personnel System is expected to recommend the bill again.

D. PAY RAISES FOR STATE EMPLOYEES

Funding levels for salary increases for employees and teachers are always an issue and particularly during the first year of the biennium. We can

expect that to be more of an issue during the 1993 Session given that: (1) employees received no increase in July 1991 and (2) were awarded a flat increase of \$522 in 1992. SEANC and its members will intensify their fight if teachers are supported in their efforts to gain a more lucrative pay raise than that for other State employees.

In general, personnel-related topics, particularly benefits, will be coming to the forefront more and more frequently during upcoming legislative sessions. Because North Carolina's system is in need of study and updating, we can expect the focus to be more on policies, systems, and procedures.

XXI. STATE GOVERNMENT, GENERALLY

A. ETHICS (Robin Johnson & Terry Sullivan 733-2578)

Problems and scandals in recent years involving governmental ethics in some of our sister states and the federal government have received much public attention. Although this State has been fortunate, for the most part, in avoiding major ethical difficulties, the General Assembly, in response to a 1991 ethics proposal, authorized the LRC to study this State's governmental ethical structure and to suggest needed changes.

A committee of that Commission will recommend legislation that would establish a comprehensive system for the promotion of continued ethical behavior by public officers and employees in their public duties. The bill would apply to all three branches of State Government (however, judges and justices would be exempt) and to specified local governmental units based on population. The present statutory regulation of legislative ethics within the legislative branch would be repealed.

The bill would establish ethical standards for public officers and employees on conflicts of interest which may arise in the following situations: the use of public position for private gain, receipt of gifts, honoraria and other compensation, participation in official actions, representation before employers, and employment and supervision of members of his or her extended family.

A State Ethics Commission would be created to implement the act and investigate alleged ethical violations and to make recommendations to the officer's or employee's employing entity. Certain specified public servants, for example, the Council of State members, legislators, members of certain local boards and others designated by the Commission as exercising substantial discretionary or supervisory authority would have to file statements of economic interest for public inspection.

B. LOBBYING (Robin Johnson & Terry Sullivan 733-2578)

A LRC committee will recommend legislation to make technical amendments and extend the regulation of lobbying to the Executive Branch. Lobbying is now regulated only before the Legislative Branch of State Government.

Those seeking for pay to influence executive branch officers' and employees' actions, such as adoption or promulgation of rules and making of contracts, would have to register as lobbyists with the Secretary of State. As a result of the extension to executive branch lobbying, the following individuals would be added to the present exceptions from registration and regulation: a person simply making comments on a proposed rule and engaging in no further efforts as a lobbyist, and an attorney representing a party in a request for a declaratory ruling or a quasi-judicial proceeding. The present legislative exemption from the lobbying law would be restricted to legislators and their staff while performing their official duties.

C. PUBLIC RECORDS/OPEN MEETINGS (William R. Gilkeson 733-2578)

1. Poole Case

In January 1992 the State Supreme Court ruled in News & Observer v. Poole, 330 N.C. 465 (1992), that the statutory exceptions to the Public Records Act will be read narrowly to promote public access and that the courts will leave to the General Assembly to determine any further restrictions to this access. The Public Records Act was written very broadly (reportedly with record retention, not public access in mind). Therefore, the Poole case leaves many public agencies more exposed than they thought they were to media demands. In Poole the Court rejected arguments that would have protected from media eyes these things in the circumstances of the case: SBI investigative reports, attorney-client communications, and preliminary drafts. The decision has led to calls for the General Assembly to re-write the Public Records Act. Proposals would aim at balancing privacy, efficient functioning of government, cost, and the right of the public to know. One idea is to establish a public agency as arbiter of access to public records.

2. Computer Records

Computers present a special problem of public records, related to the other post-Poole questions:

* Should the State use the sale of its computerized public records to bring in revenue, or should it charge cost only, or should it subsidize access (charging less than cost)?

* Should the State attempt to restrict the commercial use of public records (a question made especially difficult by the ability of recipients of public records to cross-match computer files and deduce more information than they were given in raw form)?

D. STATE REAL PROPERTY TRANSFERS

While it is expected that the State Real Property Transfers Study Commission will recommend legislation to address several issues concerning how the acquisition and disposition of state property is handled, including greater oversight by the General Assembly, it is not expected that the recommendations will be highly controversial. The primary focus probably will be to codify current practices and to insure adequate disclosures to guarantee that the existing safeguards work to protect the public.

XXII. TAXATION (Cindy Avrette - 733-2578; Sabre Faires - 733-4910; and Martha H. Harris - 733-6660)

A. REVENUE LAWS (Martha Harris - 733-6660)

A LRC committee will recommend that the General Assembly:

1. Lower the minimum highway use tax.
2. Allow the Secretary of Revenue to require payment of taxes by electronic funds transfer.
3. Allow (once again) retailers a "merchant's discount" for collection of sales taxes.
4. Require property owners who appeal property tax questions to the Property Tax Commission to pay a fee.
5. Require occupational licensing of persons who represent owners in property tax appeals.
6. Require the State Controller to set up a Statewide accounts receivable program to enhance the collection of debts owed the State.
7. Modify motor vehicle dealers' license statutes to curb abuse of dealer plates (specific proposals not yet voted on).

B. BANKS (Martha Harris - 733-6660)

The LRC's Revenue Laws Committee was assigned to compare this State's system of taxation of banks to those of other states. It has proved difficult to contract with a consultant to aid in this matter. The forces which led to authorizing the study continue to exist, however, and may manifest themselves again during the session. The North Carolina Banker's Association is reported to be hiring its own consultant for a study of this matter.

XXIII. TRANSPORTATION

A. GOVERNMENT PERFORMANCE AUDIT COMMITTEE (Richard Bostic - 733-4910; Curtis Clark - 733-7283)

KPMG Peat Marwick, the management consultant for the GPAC, has published 9 issue papers that would impact the operations of the Department of Transportation. Some of the recommendations made by the consultant are as follows:

1. Amend the Highway Trust Fund statutes to permit 16% of the available funds to be used for maintenance and operation purposes. The DOT maintenance budget is underfunded by \$50 million each year, and the maintenance backlog is estimated to be \$305 million.
2. Reduce managerial positions in the 14 highway divisions across the State. Between 138 to 177 positions could be eliminated for a savings of \$5 to \$7 million.
3. Privatize State-operated vehicle registration offices in Raleigh and Charlotte. Approximately \$1.25 million could be saved annually.
4. Meet additional staffing needs in preconstruction (highway design, planning) by increasing the use of private engineering firms.
5. Contract out all secondary road construction. Currently, 50% of such construction is done by State forces.
6. Transfer the motor carrier safety and truck weight programs in DMV to the State Highway Patrol and the DMV major crimes unit to the SBI.
7. Phase out the DMV Process Officers.

B. INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA) (Richard Bostic - 733-4910 and Giles Perry - 733-2578)

"ISTEA" is a federal Act signed into law on December 18, 1991. This Act provides authorizations for highways, highway safety, and mass transportation over a six-year period. As under previous federal transportation acts, most of the funding from ISTEA will be designated for highway construction. Unlike previous Acts, however, ISTEA emphasizes the interconnections among all modes of transportation. As a result, ISTEA gives state and local governments greater flexibility in choosing between public transit or highway solutions to transportation problems. Over the next several years, legislators may be faced with conflicts over transportation funding choices in their area.

C. ISTEA FISCAL INFORMATION (Richard Bostic 733-4910)

FY 91 Federal aid to N. C. (before ISTEA) = \$375 million
FY 92 Federal aid to N. C. (after ISTEA) = \$462.7 million
FY 93 Federal aid to N. C. = \$417 million

The FY 93 total is \$70 million less than the TIP assumed. DOT had to adjust the Transportation Improvement Program (TIP), as adopted by the Board of Transportation to reflect reduced federal appropriations.

Also under ISTEA is \$11.4 million each year in North Carolina for enhancement programs. North Carolina plans to spend enhancement money on the following:

Bicycle projects - \$1 million FY 92 then \$2 million/yr.
Billboard removal - \$500,000/yr.
Rail corridor preservation/rail station rehab = \$4 million/yr.
Spanker Shops restoration = \$4 million over 5 years
Pedestrian programs = \$150,000/FY 92 then \$250,000/yr.
Landscaping/historical = \$3.75 million/FY 92 then \$4.15 million/yr.

D. HIGHWAY MAINTENANCE FUNDING (Richard Bostic - 733-4910)

Maintenance of existing highways and bridges, as well as the new facilities constructed under the Highway Trust Fund remains an area of concern for the Department of Transportation.

A maintenance needs study conducted by the UNC Institute for Transportation Research and Education (ITRE) in 1990, documented a maintenance backlog of \$305 million. Approximately 40% of the backlog

(\$122 million) is in bridge maintenance and 16.2% is in pavement repair (\$49.7 million).

For current maintenance needs, ITRE estimated the department would need \$326 million each year. Maintenance funding for FY 92-93 totals only \$281.04 million or an annual shortfall of \$45 million.

The ITRE study also found the need to spend \$132.4 million on resurfacing, but only \$86.5 million is budgeted in FY 92-93. A September 3, 1992 report to the Board of Transportation listed resurfacing needs of \$200 million on the interstate system and \$60 million on the primary system.

E. HIGHWAY TRUST FUND ACT OF 1989 (Fred Aikens, Richard Bostic - 733-4910 and Giles Perry - 733-2578)

During the 1989 Session, the General Assembly enacted the Highway Trust Fund, a \$9.1 billion, 17-20 year highway construction program. Trust Fund construction projects are currently underway across the state, generally according to the schedule established in the TIP.

F. RAIL COUNCIL (Sean Dail - 733-6660 and Giles Perry - 733-2578)

In recognition of the importance of railroads to the State's economy, the LRC Railroads and Other Public Transportation Study Committee has recommended that a permanent Rail Council be established within the Department of Transportation. The Council would advise the Governor, Secretary of Transportation, and the General Assembly on rail policy.

G. TRANSFER OF RAIL SAFETY INSPECTORS (Giles Perry - 733-2578)

Currently, the State's rail safety inspection activities, as well as other railroad regulatory functions (station and team track closings, railroad speed limits and crossing location, right-of-way condemnation mapping, etc.) are performed by the Utilities Commission. Since the establishment in 1989 of regulatory fees to defray the cost of regulating public utilities, a dispute has developed between the railroad industry and the Utilities over the payment of those fees. The railroads contend that they are not subject to the regulatory fee, and currently are not paying any fee; therefore, the cost of all regulatory functions now performed by the Utilities Commission is being paid with fees collected from other utilities. During the 1991-92 Session, the General Assembly considered a bill to transfer all rail regulatory functions from the Utilities Commission to the Department of Transportation, in order to solve the funding dilemma and to avoid further assessment of railroads, which are already heavily assessed by the Federal Railroad Administration. The bill passed the Senate, but not the House. The LRC Railroads and Other Public

Transportation Study Committee is planning to recommend a new version of this proposal to the 1993 Session. The new proposal would transfer the rail safety inspection program from the Utilities Commission to the Department of Transportation, but would leave other rail regulatory functions with the Utilities Commission.

H. RAILROAD CROSSING SAFETY (Richard Bostic - 733-4910 and Giles Perry - 733-2578)

This issue has received more attention recently, due to recent accidents, and as a result of various highway rail-crossing construction projects around the state. The Department of Transportation recently accelerated its rail-crossing signalization program, with emphasis on hazard elimination on Amtrak routes.

I. RAIL FUNDING Richard Bostic - 733-4910 and Giles Perry - 733-2578)

The LRC Railroads and Other Public Transportation Committee considered, but took no action, on an expanded rail program within the Department of Transportation. The \$3.5 million program would have been funded by a transfer from the General Fund of the revenue derived from the State's sales and use taxes collected from the sale to railroads of diesel or other fuel for locomotives, lubricants for locomotives and rolling stock, replacement parts and accessories for locomotives and rolling stock, and track materials. This funding system is similar to one currently used to fund the aviation program within the Department of Transportation.

J. REGIONAL TRANSPORTATION AUTHORITIES (Giles Perry - 733-2578)

In 1989, the General Assembly authorized the creation of the first regional transit authority in the State, the Triangle Transit Authority. During the 1993 Session, the General Assembly may be asked to consider creating regional transit authorities in the Charlotte and Greensboro/High Point/Winston-Salem areas.

In addition, the LRC Railroads and Other Public Transportation Study Committee has recommended that the current 2% restriction on the use of proceeds from the regional transportation authority registration tax be repealed, in order to give the Triangle Transit Authority more flexibility in the use of its funds.

K. PUBLIC TRANSPORTATION FUNDING (Richard Bostic - 733-4910 and Giles Perry - 733-2578)

This will likely be an area of continuing interest during the 1993 Session. In September 1992, the N.C. Public Transportation Association presented

a \$48.5 million public transportation program to the LRC Railroads and Other Public Transportation Study Committee. The proposed program would increase funding for both rural and urban transportation systems around the State. The proposal contained no method of funding. In December, the same Committee heard a proposal to provide \$26 million in operating assistance to urban and rural public transportation systems. The Study Committee took no action on either proposal.

L. TOLL ROADS (Giles Perry - 733-2578)

Imposition of tolls continues to be a topic of interest as a way to raise additional revenue. Under the new Federal transportation bill (ISTEA), tolls are permitted to a much greater extent than under previous federal-aid highway legislation. Now, tolls may be imposed on the following Federal-aid projects: (1) Initial construction (except interstate), (2) Rehabilitation work on existing toll facilities, (3) Reconstruction or replacement of free bridges or tunnels and conversion to toll facilities, (4) Reconstruction of free highways (except interstate) to convert to tolls, and (5) Preliminary studies to determine the feasibility of (1) through (4). Local officials have suggested that tolls be used as a method to speed construction of high-volume highway projects in the State, such as urban loop projects.

M. FUTURE OF THE NORTH CAROLINA RAILROAD COMPANY (Sean Dail - 733-6660)

At the end of 1994, a 99-year lease and a 65-year lease of the North Carolina Railroad corridor expire. These leases do not require the lessor or lessee to renew the leases. The State of North Carolina owns 75% of the stock in the North Carolina Railroad Company, and as principal stockholder will be greatly affected by the company's decision to renegotiate the lease or otherwise dispose of the rail corridor. More importantly, State law (G.S. 124-5) requires that any corporation in which the State owns stock to obtain the approval of the Governor and the Council of State prior to any sale, lease, or other disposal of its property.

N. BACKGROUND/RAILROAD ADVISORY COMMISSION (Sean Dail - 733-6660)

1. Background

The North Carolina Railroad Company owns a 317-mile rail corridor between Morehead City and Charlotte. The corridor is in the form of an arc that runs through New Bern, Kinston, Goldsboro, Selma, Raleigh, Research Triangle Park, Durham, Mebane, Burlington, Greensboro, High Point, Lexington, Salisbury, and Kannapolis. The route between Greensboro and Charlotte is a primary line of Norfolk Southern Railway's north-south freight

route between Washington, D.C. and Jacksonville, Fla. The Raleigh to Charlotte route is included in a corridor selected by the U.S. Department of Transportation in October 1992 as one of five national corridors for the development of high-speed rail service.

The current company represents the merger of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company in September, 1989. It does not actively conduct railroad operations, but leases all its railroad lines to Norfolk Southern Railway Company and a subsidiary of Norfolk Southern, the Atlantic and East Carolina Railway Company pursuant to three leases, two of which expire at the end of 1994.

In 1991, the General Assembly created the Railroad Advisory Commission and charged it with advising the Governor, Council of State, and General Assembly of its opinion of any proposed lease or other transaction involving all or a substantial portion of the assets of the North Carolina Railroad Company.

2. Buy-out Proposal

At the December 1992 meeting of the Council of State, a study group formed by Governor Martin proposed that the State purchase the remaining 25% of the company's stock, which is currently owned by some 900 private shareholders. The study group's report found that such acquisition was feasible, and might be accomplished through a tender offer or a cash-out merger. However, the study group expressed uncertainty as to whether the acquisition should take place before or after the lease has been renegotiated. The matter was scheduled for discussion and action at the Council of State's January meeting.

XXIV. UTILITIES (Steve Rose - 733-2578)

A. FEDERAL COMPREHENSIVE ENERGY BILL

On October 24, 1992, President Bush signed into law the Energy Policy Act of 1992. This is a comprehensive energy bill covering everything from state building codes to the deregulation of some aspects of the generation of electricity. It includes energy efficiency standards for homes and office buildings, and mandates efficiency standards for lighting, electric motors, appliances, utilities transformers, shower heads, faucets and toilets. It also mandates the purchase of certain percentages of alternative fuel vehicles by states and sets up electric vehicle demonstration programs. The Utility Review Committee reviewed the bill on November 6, 1992 and will take it up again. The Committee has asked interested parties to review the new federal law and propose changes in State law which might be necessitated by the

federal act. The Committee may make recommendations to the General Assembly if legislative action is necessary.

B. CABLE TV REREGULATION (Steve Rose - 733-2578)

Congress has recently passed, over the veto of President Bush, a cable TV reregulation bill. This bill puts limited powers in the hands of local governments, and by extension, the states. There is a federal rulemaking process which should be concluded by April, 1994. The lack of regulation of cable TV has been a source of constituent complaints for some time. This suggests the possibility of legislator response, though probably not until the short session in 1994.